

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2019

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

WP.No.26334 of 2017

and

WMP Nos.27992, 30389 and 32033 of 2017

M.Veeramani

... Petitioner

vs.

1. Union of Territory of Puducherry,
Rep. by the Chief Secretary to Government,
Government of Puducherry,
Secretariat, Beach Road,
Puducherry - 605 001.

2. The Secretary to Governor,
Government of Puducherry,
Raj Nivas, Puducherry.

3. The District Collector (Karaikal),
Office of the District Collector (Karaikal),
Karaikal.

4. The Commissioner (Excise),
Government of Puducherry,
Office of the Excise Commissioner,
Secretariat, Pondicherry - 605 001.

5. The Deputy Commissioner (Excise),
Government of Puducherry,
Excise Department,
Thattanchavadi (near Govt. Press),
Pondicherry.

6. The Commissioner,
Hindu Religious Charitable and Endowment Board,
Government of Puducherry,
Puducherry - 605 009.

7. T.Anandhanarayanan,
The Special Officer,
Arulmigu Vizhidhinathaswami Temple Devasthanam,
Vizhidiyur,
Niravi Commune,
Karaikal District, Union Territory of Puducherry.

8. Jhothi Bar,
Represented by its Proprietor Mr.R.Murugesan.

... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of mandamus, directing the respondent No.1 to 5 to consider and take appropriate action on the representations dated 07.05.2017, 11.05.2017, 22.05.2017, 18.07.2017 & 04.09.2017, submitted by the petitioner and other village people of Vizhidiyur Village and thereby direct them to close down the Bar (FL-2) Licence) which is being run by the 8th respondent name and style of Jothi Bar in R.S.No.3/3 at Vizhidiyur Main Road, Niravi Commune, Karaikal District forthwith in the interest of Temple and general public.

For Petitioner : Mr.Prakash Adiapadam

For Respondents : Mrs.V.Usha (for R1 to R6)
Addnl. Govt. Pleader (Pondy)

Mr.V.Radhakrishnan
Sr. Counsel
for Mr.P.Parthiban (for R8)

Mr.A.Gandhi Raj
Government Pleader (Pondicherry)
(for R7)

ORDER

(Order of the Court was delivered by SUBRAMONIUM PRASAD, J)

Instant public interest litigation has been filed for a writ of mandamus, directing Jhothi Bar, represented by its proprietor Mr.R.Murugesan, the 8th respondent, to close down the Bar (FL-2) Licence), in R.S.No.3/3 at Vizhidiyur Main Road, Niravi Commune, Karaikal District, forthwith, in the interest of Temple and general public.

2. The petitioner states that Sri Arulmigu Thiravoupathi Amman Temple is a famous, renowned and an ancient temple in Vizhidiyur Village, Karaikal District and is situated in R.S.No.1/3. It is a public temple under the control of Hindu Religious and Charitable Endowment Board (HR&CE) and governed under the Puducherry Hindu Religious Institutions Act, 1972.

3. The petitioner states that near the temple, there is a vacant land measuring two acres in R.S.No.3. It belongs to Arulmigu Vizhidhinathaswami Temple. Several functions are conducted in the said land. The petitioner contends that the Special Officer, Arulmigu Vizhidhinathaswami Temple Devasthanam, Vizhidiyur, has leased out the said property to the 8th respondent, who is running a Bar (FL-2 Licence) with a canteen under the name and style of 'Jothi Bar'. The petitioner states that the lease deed is an unregistered document. It is

alleged in the writ petition that lot of nuisance is caused, because of the bar and the devotees are not in a position to approach the temple. The petitioner states that the bar is located within the prohibited distance mentioned under the Puducherry Excise Rules, 1970.

4. On notice, Collector, Karaikal, has filed a counter on behalf Respondent Nos. 1 to 5.

5. It is stated in the counter affidavit that Jothi bar is located in the land bearing Re-Survey No.3/4 and 3/3 and the land bearing Survey No.3/4, stands in the name of one Mr.Nagarajan, S/o. Thangavelu Chettiyar. The land has been purchased by Mr.R.Murugesan, S/o.Rasunaiker, the Proprietor of Jothi Bar.

6. It is admitted in the counter that R.S.No.3/3 belongs to Shri Arulmigu Veezhinathaswamy Temple. The Special Officer of the temple has leased out the above said site to Mr.Murugesan, S/o.Rasunaiker, Proprietor of Jothi Bar, to run the bar, to provide parking space and eateries.

7. It is stated that an agreement of lease has been entered into for increasing the revenue of the temple. According to the State, the Bar is located 120 meters away from the temple and therefore, there is no violation of Rule 113(2) of the Puducherry Excise Rules, 1970.

8. The 8th respondent viz., R.Murugesan, Proprietor of Jothi Bar, in his counter, in addition to what has been stated in the counter filed by the respondents 1 to 5 i.e., State, has stated that the Bar is running strictly in compliance with the conditions given in the licence. He has stated that he has invested very heavily for running the bar.

9. The 8th respondent has also filed an Inspection Report of the Deputy Commissioner (Excise), Puducherry and has filed the sketch of the area, to substantiate the contention that the bar is situated at a place, which is more than the limits stated in Rule 113(2) of the Puducherry Excise Rules, 1970.

10. Heard the learned counsel for the parties and perused the materials available on record.

11. The short question which arises for consideration is, whether location of bar in Re-Survey No.3/4, is contrary to the Puducherry Excise Rules, 1970 or not.

12. When the matter came up for hearing, this Court on 03.07.2019, passed the following order.

"Property in S.No.3/3, which belongs to Arulmigu Vizhidinathaswamy Temple Devasthanam, has been leased to M/s.Jothy Bar, 8th respondent herein by the Special Officer of the Arulmigu Vizhidinathaswamy Temple Devasthanam, Vizhidiyur, Neravy Commune, Karaikal District, Union Territory of Puduchery, so as to facilitate location of bar in S.Nos.3/3 & 3/4, Vizhidiyur Main Road, Neravy Commune, Karaikal District, Union Territory of Puduchery.

2. Rule 113(2)(i) of the Puducherry Excise Rules, 1970 as amended in Puducherry Excise (Amendment) Rules, 2014, reads thus:

(i) No shop shall be established in Municipal areas within a distance of 50 (fifty) meters and in other areas 100 (hundred) meters from any place of worship or educational institution:

Provided that the distance restriction shall not apply in areas designated as "Commercial" or "Industrial" by the Town Planning Authorities:

Provided further that if any place of worship or educational institution comes into existence subsequent to the establishment of the shop, the distance restrictions specified in this rule shall not apply.

Explanation - For the purpose of this rule-

(a) "Place of worship" means a 'temple' as defined in the Puducherry Hindu Religious Institutions Act, 1972, a Mosque / Dargah registered with the Wakf Board, a Church and includes such other religious institutions as the State Government may by order specify in this behalf.

(b) "Educational Institution" means any pre-primary, primary, middle or high school or higher secondary school or any other institution imparting education or training, recognised by the State Government or Central Government, or any college affiliated to any University established by law.

(c) Calculation of distance for the purpose of this rule will be the shortest pathway / lane / street / road generally used by the public and the same shall be measured from gate to gate.

(d) The distance restrictions specified in this rule does not apply to

licenses issued to hotels and restaurants under the Tourism Category."

3. As per explanation (c) to the amended Rule 113(2) of the Puducherry Excise Rules, 1970, calculation of distance for the purpose of this rule will be the shortest pathway / lane / street / road generally used by the public and the same shall be measured from gate to gate.

4. As per the sketch of the Tahsildar, Taluk Office, Karaikal, Dhrowbathi Amman Temple, is stated to be located in S.No.3, Vizhidiyur, Neravy Commune, Karaikal District, Union Territory of Puduchery, and that in the sketch, it is shown as 'D'. TASMAR bar is at S.No.3/4. As per the sketch property in S.No.3/3 belonging to the temple is shown as 'E'. Property in S.No.3/2 is a patta land and the same is shown as 'C'.

5. From the sketch of the Tahsildar, Taluk Office, Karaikal, it could be deduced that the distance between the property 'C' has been measured from 'C' i.e. S.No.3/2 to 'D' i.e. S.No.3 and then 'E' i.e. S.No.3/3.

6. As per explanation 'c' to Rule 113(2) of amended Pudhucherry Excise Rules, 1970, distance ought to have been measured from gate to gate, which means the outer limit of the property owned by and the temple or if it is to be interpreted otherwise, gate of the temple in S.No.3.

7. Tahsildar, Taluk Office, Karaikal, seemed to have measured the distance from C to D and thereafter to E. Prima facie we are of the view that distance ought to have been measured from D to E and not as done by the Tahsildar i.e. from C to D and thereafter to E.

8. District Collector, Karaikal, 3rd respondent is directed to measure the distance from D to E and also the distance from the outer limits of E and the location of bar at S.No.3/4. We make it clear that there should be two different heads of measurements i.e. 'Distance from D to E' and 'Distance from outer limit of 'E' to the Bar', with the help of a Surveyor and in the presence of District Legal Services Authority, Pondicherry.

9. Post on 15.07.2019, immediately after motion cases."

13. Pursuant to the above order, the District Collector, Karaikal has conducted a field inspection and filed a report with a sketch. The report reads as under.

PROCEEDINGS OF THE DISTRICT COLLECTOR, KARAİKAL
ON THE FIELD INSPECTION CONDUCTED ON 10.07.2019
BASED ON THE ORDER OF THE HON'BLE HIGH COURT AT
MADRAS IN WP NO.26334 OF 2017 AND WMP NO.27992

OF 2017, IN THE PRESENCE OF THE SECRETARY,
DISTRICT LEGAL SERVICES AUTHORITY, PONDICHERRY
AND THE MEMBER SECRETARY, STATE LEGAL SERVICES
AUTHORITY, PUDUCHERRY.

PRESENT: 1. THE SECRETARY,
DISTRICT LEGAL SERVICES
AUTHORITY,
PONDICHERRY.

2. THE MANAGING SECRETARY,
STATE LEGAL SERVICES AUTHORITY,
PUDUCHERRY.

3. MR.A.VIKRANTH RAJA, I.A.S.,
DISTRICT COLLECTOR, KARAİKAL.

In pursuance of the Court Order dated 03.07.2019 in WP No.26334 of 2017 and WMP No.27992 of 2017 of Hon'ble Judges of High Court of Judicature at Madras (Special Original Jurisdiction), Madras, the District Collector, Karaikal (3rd respondent) has inspected the disputed site and measured the distance from D to E and also the distance from the other limits of E to the location of M/s.Jothi Bar, Vizhidiyur, Karaikal at S.No.3/4 with the help of a Field Surveyor and in the presence of the Member Secretary, State Legal Services Authority, Puducherry and the Secretary, District Legal Services Authority, Pondicherry and reported as detailed below:

Distance from 'D' to 'E' : 79.8 Metres.

Distance from outer limits of 'E' to the said Bar at S.No.3/4: 40 Metres

With the above, the field inspection report is submitted to the Hon'ble High Court at Madras for kind perusal please.

Sd/-	Sd/-	Sd/-
(A.VIKRANTH RAJA, I.A.S.,)		THE MEMBER
SECRETARY	THE SECRETARY	
DISTRICT COLLECTOR	STATE LEGAL SERVICES	

DISTRICT LEGAL SERVICES
KARAIKAL AUTHORITY, PUDUCHERRY
AUTHORITY, PONDICHERRY."

14. Admittedly, the 7th respondent has leased out land in R.S.No.3/3 belonging to Arulmigu Vizhidhinathaswamy Temple to the 8th respondent Mr.Murugesan, Proprietor of Jothi Bar. District Collector, Karaikal, in his counter has categorically stated that R.S.No.3/3 has been given to the licensee of Jothi Bar viz., Mr. Murugesan, S/o.Rasu Naicker, who runs the bar, to provide parking space and eateries. Paragraph No.8 of the counter reads as under.

"8. It is submitted that proposed site of M/s.Jothi Bar is located in the land bearing Re-survey No.3/4 and 3/3, the land bearing Survey No.3/4 stands in the name of Nagarajan S/o. Thangavelu Chettiyar as per Record of Right and the same land has been purchased by one G.Selvarasu S/o. Gopal Padaiyachi on 28.02.1992 and sold to the licensee of Jothi Bar R.Murugesan, S/o.Rasunaicker on 24.09.2004 through a registered sale deed. The land bearing Re-Survey No.3/3 belongs to Arulmigu Veezhinathaswamy temple. The Special Officer of the temple has rented out the above site to the licensee of M/s.Jothi Bar, Thiru.R.Murugesan, S/o. Rasu Naicker to run the Bar, providing parking space, and eateries in an agreement executed on 29.04.2017 stating the reason of increasing the revenue of the Devasthanam."

15. Section 2(i) of the Puducherry Hindu Religious Institutions Act, 1972 defines, 'Temple', which reads as under.

"temple" means a place, by whatever designation known, used as a place of public religious worship and dedicated to, or for the benefit of, or used as or right by, the Hindu Community or any section thereof as a place of public religious worship."

16. Rule 113 of the Puducherry Excise Rules, 1970 was amended in 2014. Section 2 of the amending Act, amending sub rule 2 of clause (i) of Rule 113 reads as under.

(i) No shop shall be established in Municipal areas within a distance of 50 (fifty) meters and in other areas 100 (hundred) meters from any place of worship or educational institution:

Provided that the distance restriction shall not apply in areas designated as "Commercial" or "Industrial" by the Town Planning Authorities:

Provided further that if any place of worship or educational institution comes into existence subsequent to the establishment of the shop, the distance restrictions specified in this rule shall not apply.

Explanation - For the purpose of this rule-

(a) "Place of worship" means a 'temple' as defined in the Puducherry Hindu Religious Institutions Act, 1972, a Mosque / Dargah registered with the Wakf Board, a Church and includes such other religious institutions as the State Government may by order specify in this behalf.

(b) "Educational Institution" means any pre-primary, primary, middle or high school or higher secondary school or any other institution imparting education or training, recognised by the State Government or Central Government, or any college affiliated to any University established by law.

(c) Calculation of distance for the purpose of this rule will be the shortest pathway / lane / street / road generally used by the public and the same shall be measured from gate to gate.

(d) The distance restrictions specified in this rule does not apply to licenses issued to hotels and restaurants under the Tourism Category."

17. A perusal of the above mentioned rules, would show that no liquor shop can be established in a non municipal area within 100 meters from any place of worship or educational institution.

18. The explanation clearly states that the "Place of worship" means a 'temple' as defined in the Puducherry Hindu Religious Institutions Act, 1972 and "temple" is defined as a place, by whatever designation known, used as a place of public religious worship and dedicated to, or for the benefit of, or used as or right by the Hindu Community or any section thereof, as a place of public religious worship.

19. The 8th respondent has obtained FL-2 licence. As per Puducherry Excise Rules, 1970, FL-2 licence is

defined as hereunder.

"F.L.2 Licence: - The holder of this licence shall be permitted to sell foreign liquor or Indian Liquor, or both, in sealed and capsuled bottles in quantities not exceeding 4.5 litres of all liquors other than beer and 9 litres of beer at any one time or in any single transaction with or without permission to sell such liquor in open bottles, glasses or pegs for consumption within the licensed premises of the bar room combined with supply of meals and eatables:

Provided that if the licensee wants to have such sale in open bottles, glasses or pegs for consumption within the licensed premises of the bar room with supply of meals or eatables, the following further conditions will have to be satisfied, namely:-

(i) the licensed premises shall be 300 meters away from public places, educational institutions or religious establishments as far as possible;

(ii) the licensee shall have a hygienically kept kitchen to prepare meals or eatables for supply with liquor;

(iii) there shall be a room provided with sufficient ventilation and seating arrangements where liquor or meals or eatables are to be supplied with liquor; and

(iv) there shall be facilities like lavatory, urinal, wash basin and any other facility as may be specified by the Government from time to time on grounds of public interest;

Provided further that if the licensee is licensed to run Pub Beer Centre, the following additional conditions shall have to be satisfied, namely:-

(i) The Licensee should have a tie-up with a brewery to effect regular timely supply of draught cans and shall have technical agreement with the brewery for known-how, maintenance, etc., and to take back unsold draught beer.

(ii) Instal special equipments such as---

(a) Carbon-di-oxide cylinder;

(b) Chiller;

(c) Dispenser, etc.

(iii) The licensee apply for Pub Beer licence in their existing bar shall earmark an exclusive area of not less

than 300 sq.ft with amenities like air-conditioning and toilet facilities and for supply of drought beer in that area only; however, this clause will not be applicable for licences issued under Tourism Category."

20. Distance criteria has been amended in 2014, which has been extracted in the earlier portion of the judgment. Counter affidavit as stated above, shows that the 8th respondent, is using the land in R.S.No.3/3 as a place for parking and also it is being used for the purpose of selling snacks to the people who consume liquour, purchased from the liquor shop situated in R.S.No.3/4. The gate of the shop, therefore, opens at R.S.No.3/3. The distance between R.S.No.3/3 to the temple is 79.80 meters, which is less than 100 meters, as provided in the sketch. The liquor shop therefore, begins from R.S.No.3/3, and expands to R.S.No.3/4. The shop is therefore, located at a place, which is hit by Rule 113(2) of the Puducherry Excise Rules, 1970.

21. Confronted with this, the learned counsel for the 8th respondent stated that he would surrender the lease and would operate only from the liquor shop, which is situated at S.No.3/4 and the distance from the temple to R.S.No.3/4 being more than 100 metres, is outside the restricted distance, as provided in Rule 113(2) of the Puducherry Excise Rules, 1970. We are afraid that argument can be accepted.

22. Explanation to Rule 113 states that 'place of worship' means a temple and includes such other religious institutions as the State Government may by order specify. 'Hindu Religious Institution' is defined under the Puducherry Hindu Religious Institutions Act, 1972 to mean a math, temple or specific endowment and the 'specific endowment' is defined as any property or money endowed for the performance of any specific service or charity in a math or temple or for the performance of any other religious charity.

23. Prior to lease, it is the contention of the petitioner that said land was used for conducting festivals / functions [fire walk & Sedal ceremonies] relating to the temple and that land must therefore, be included in the definition of 'place of worship' in terms of the explanation. The object of Rule 113(2) is to ensure that a liquor shop was not permitted to be opened near a place of worship so that the devotees of whatever religion are not disturbed by persons who consume liquor. The idea is to ensure that the sentiments of the people, who come to pray are not affected by the conduct of persons, who in an inhibited state, are likely to cause disturbance to the devotees. That being the object of Rule 113(2) of the Puducherry Excise Rules, 1970 the same cannot be diluted.

24. The definition of 'place of worship', has to be given an expansive meaning. It cannot be restricted only to the four walls of the temple, within which the sanct sanctorum, is located. It is a well known rule of interpretation that whenever a definition with expressions 'means' and 'includes' is used, then it indicates that the definition is inclusive in nature and also covers categories which are not expressly mentioned therein. The Hon'ble Supreme Court in P.Kasilingam and others Vs. PSG College of Technology and Others, reported in 1995 Supp (2) SCC 348, the Hon'ble Supreme Court, observed as under.

"19.... A particular expression is often defined by the Legislature by using the word 'means' or the word 'includes'. Sometimes the words 'means and includes' are used. The use of the word 'means' indicates that "definition is a hard-and-fast definition, and no other meaning can be assigned to the expression than is put down in definition". (See : Gough v. Gough [(1891) 2 QB 665 : 60 LJ QB 726] ; Punjab Land Development and Reclamation Corpn. Ltd. v. Presiding Officer, Labour Court [(1990) 3 SCC 682, 717 : 1991 SCC (L&S) 71] .) The word 'includes' when used, enlarges the meaning of the expression defined so as to comprehend not only such things as they signify according to their natural import but also those things which the clause declares that they shall include. The words "means and includes", on the other hand, indicate "an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions".

25. Similarly, in Bharat Coop. Bank (Mumbai) Ltd. Vs. Employees Union, reported in (2007) 4 SCC 685, it has been observed as under.

"23. ... when in the definition clause given in any statute the word 'means' is used, what follows is intended to speak exhaustively. When the word 'means' is used in the definition ... it is a 'hard-and-fast' definition and no meaning other than that which is put in the definition can be assigned to the same. ... On the other hand, when the word 'includes' is used in the definition, the legislature does not intend to restrict the definition: it makes the definition enumerative but not exhaustive. That is to say, the term defined will retain its ordinary meaning but its scope would be extended to bring within it matters, which in its ordinary meaning may or may not comprise.

Therefore, the use of the word 'means' followed by the word 'includes' in [the definition of 'banking company' in] Section 2 (bb) of the ID Act is clearly indicative of the legislative intent to make the definition exhaustive and would cover only those banking companies which fall within the purview of the definition and no other."

26. In N.D.P.Namboodripad Vs. Union of India, reported in (2007) 4 SCC 502, at paragraph No.18, the Hon'ble Supreme Court, observed as under.

"18. The word 'includes' has different meanings in different contexts. Standard dictionaries assign more than one meaning to the word 'include'. Webster's Dictionary defines the word 'include' as synonymous with 'comprise' or 'contain'. Illustrated Oxford Dictionary defines the word 'include' as: (i) comprise or reckon in as a part of a whole; (ii) treat or regard as so included. Collins Dictionary of English Language defines the word 'includes' as: (i) to have as contents or part of the contents; be made up of or contain; (ii) to add as part of something else; put in as part of a set, group or a category; (iii) to contain as a secondary or minor ingredient or element. It is no doubt true that generally when the word 'include' is used in a definition clause, it is used as a word of enlargement, that is to make the definition extensive and not restrictive. But the word 'includes' is also used to connote a specific meaning, that is, as 'means and includes' or 'comprises' or 'consists of'."

(emphasis in original)

27. In Hamdard (Wakf) Laboratories Vs. Labour Commr, reported in (2007) 5 SCC 281, at paragraph No.33, the Hon'ble Supreme Court has observed as under.

"33. When an interpretation clause uses the word 'includes', it is prima facie extensive. When it uses the word 'means and includes', it will afford an exhaustive explanation to the meaning which for the purposes of the Act must invariably be attached to the word or expression."

28. All these judgments have been quoted with the approval by the Hon'ble Supreme Court in Delhi Development Authority Vs. Bhola Nath Sharma (Dead) by Lrs. and others, reported in (2011) 2 SCC 54.

29. A reading of all these judgments and keeping in mind the object of Rule 113 of the Puducherry Excise Rules, 1970, the word 'place of worship' has to be given an expansive meaning. It must not only include the

temple, but also include, such lands belonging to the temple, which is being used for conducting functions related to the temple and its activities. If this is accepted then, no liquor shop can operate in R.S.No.3/4 also. Since the distance from R.S.No.3/3 to R.S.No.3/4, is 40 metres only. So, either which way one looks at i.e. where R.S.No.3/4 and R.S.No.3/3 taken as a composite shop or R.S.No.3/4 is taken alone, where liquor shop is situated, the liquor bar located in R.S.No.3/4, is hit by the restrictions prescribed in Rule 113(2) of the Puducherry Excise Rules, 1970. In view of the above, instant writ petition is allowed. The Commissioner (Excise), Government of Puducherry, Puducherry, 4th respondent is directed to take steps to cancel the FL-2 license, granted to the 8th respondent, within four weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected writ miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS III)

//True Copy//

Sub Assistant Registrar

ars/dm

To

1. The Chief Secretary to Government,
Union of Territory of Puducherry,
Government of Puducherry,
Secretariat, Beach Road,
Puducherry - 605 001.
2. The Secretary to Governor,
Government of Puducherry,
Raj Nivas, Puducherry.
3. The District Collector (Karaikal),
Office of the District Collector (Karaikal),
Karaikal.
4. The Commissioner (Excise),
Government of Puducherry,
Office of the Excise Commissioner,
Secretariat, Pondicherry - 605 001.

5. The Deputy Commissioner (Excise),
Government of Puducherry,
Excise Department, Thattanchavadi (near Govt. Press),
Pondicherry.

6. The Commissioner,
Hindu Religious Charitable and Endowment Board,
Government of Puducherry,
Puducherry - 605 009.

+1cc to Mr.M.Vaikunth , Advocate SR.No. 69071

+1 cc to Government Pleader Sr.No. 68713

WP.No.26334 of 2017
and WMP Nos.27992, 30389
and 32033 of 2017

A.SK(13/08/2019)